THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.22373 of 1995

Dated:14.11.2006

Between

Mangat Ram

.....Petitioner

and

1.Govt. of India rep., by its

Secretary, Ministry of Defence

New Delhi and others.

....Respondents.

THE HON'BLE SRI JUSTICE C.V.RAMULU

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ORDER:

This writ petition is filed seeking a Mandamus to declare that the petitioner is senior to 3rd and 4th respondents and others and is entitled to promotion to all categories up to Subedar Major and also Honarary lieutenant/captain and to pay all the consequential benefits.

It appears that the petitioner was appointed in Army on 4.10.1963. Later he was promoted to the rank of Naik and subsequently Havaldar and thereafter to Naib Subedar on 23.3.1986. In view of the revised terms of service, options were called for from the serving personnel as to whether they are intending to be governed by old terms of service or the revised terms. As per the revised terms of service, a Havaldar

would have only 24 years of service. The petitioner opted for revised terms of service. He had completed 24 years of service in the cadre of Havaldar, and thereafter retired from service. Five years after his retirement, he filed the present writ petition stating that respondents 2 and 3 are juniors to him, therefore, he should be given promotion on par with them up to the cadre of Lieutenant and Honarary Captain with all consequential benefits.

A detailed counter affidavit has been filed by the respondents stating that the petitioner completed 26 years of service on 3rd October, 1989 and discharged from service on 31st October, 1989. The promotion of the 2nd and 3rd respondents has no relevance to the petitioner. During service of the petitioner, he could not be granted further rank of Subedar and Subedar Major since there was no post available. Further, the petitioner retired after completion of 26 years of service. After his retirement, though the 3rd and 4th respondents were juniors to the petitioner, they were promoted to the higher post as they had put in 26 years of service as on the date of their promotion. As per the revised terms of engagement, the petitioner as Naib Subedar has to serve upto 26 years of service. His date of enrolment was 4th October, 1963 and he completed 26 years of service on 3rd October, 1989 and discharged from service on 31st October, 1989. But he could not be promoted since there was no vacancy arose before his retirement.

May be, the petitioner had put in 26 years of service before his retirement, unless and until vacancy was available before his retirement, he could not have been promoted as rightly stated by the respondents. Therefore, the promotion of the 3rd and 4th respondents has nothing to do with the petitioner. Even though they were juniors, they were promoted after completion of 26 years of service, whenever vacancy had arisen in higher cadres. Writ petition is devoid of merits and is liable to be dismissed.

Writ petition is accordingly dismissed. No costs.

14-11-2006

rkk